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Supreme Court of the United States

October Term, 1978

No. 78-1422

RETIREMENT FUND TRUST OF THE PLUMBING, HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA,

Appellant,

vs.

EDITH J. JOHNS,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA.

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Appellant,

vs.

EDITH J. JOHNS,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA.

Appellant appeals from a decision of the Court of Appeal, Fourth Appellate District, Division One, of the State of California in the above entitled case. Appellant's timely Petition for Hearing to the California Supreme Court to contest said decision was denied.

Opinion Below.

The opinion of the Court of Appeal, Fourth Appellate District, of the State of California is reported at 85 Cal.App.3d 511, 149 Cal.Rptr. 551 (1978) and is set forth in Appendix B, *infra* pp. 11-12. The minute order of the California Supreme Court denying Appellant's Petition for Hearing is included in Appendix C, *infra* p. 13.

Jurisdiction.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(2), this being an appeal which draws into question the validity of California's community property laws, specifically Cal. Civ. Code §§5105 and 5125, on the ground that they are repugnant to the laws and Constitution of the United States.

On September 2, 1976 the Honorable Charles W. Froelich, Judge of the Superior Court of the State of California for the County of San Diego, entered an order requiring Appellant to make direct payments to Respondent of one-half (½) of her former husband's periodic retirement benefits under Appellant's "plan", pursuant to California's community property laws. In so doing, Judge Froelich rejected Appellant's contention that said order was unconstitutional as in violation of the Supremacy Clause of the United States Constitution (U.S. Const. art. VI, cl. 2), because Congress intended the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"), Pub. L. No. 93-406, 29 U.S.C. §1001, *et seq.*, and section 302(c)(5) of the National Labor Relations Act (hereinafter "NLRA"), as amended, 29 U.S.C. §186(c)(5), to preempt state laws regarding the division of property in dissolution proceedings to the extent they affect or relate to the operation or management of employee pension funds.

On November 3, 1976, Appellant filed a timely appeal from the aforementioned order in the Court of Appeal for the Fourth Appellate District of the State of California. Subsequently, briefs were filed by Respondent's and Appellant's respective counsel on the issue of the preemptive effect of ERISA and the

NLRA *vis-a-vis* California's community property laws. Both parties waived oral argument. On October 13, 1978, the Court of Appeal entered an abbreviated decision affirming the order of the Superior Court below.

In its brief opinion, the Court of Appeal held that ERISA "does not preempt California law as is applied here in matrimonial matters." Appendix B, *infra* pp. 11-12. Its rejection of Appellant's secondary argument that Section 302(c)(5) of the NLRA preempts California's community property laws in this context must be inferred from its decision to affirm the order below. The court did not, however, expressly address this issue in its opinion.

On November 21, 1978, Appellant filed a timely Petition for Hearing before the California Supreme Court to contest this decision. On December 20, 1978, the California Supreme Court denied Appellant's petition. Timely notice of appeal to this Court was filed on March 2, 1979.

As the denial of Appellant's Petition for Hearing by the California Supreme Court has the effect of upholding the validity of Cal. Civ. Code §§5105 and 5125 as against Appellant's challenge, this matter is appropriately brought by appeal. *See, e.g., Reconstruction Finance Corp. v. County of Beaver Pennsylvania,* 328 U.S. 204 (1946).

In the event that the Court does not consider appeal the proper mode of review, appellant respectfully requests that the papers whereupon this appeal is taken be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U.S.C. §§1257(3) and 2103.

Constitutional and Statutory Provisions Involved.

This case involves Article VI, Clause 2 of the United States Constitution. The United States statutes involved are Section 302(c)(5) and (d) of the National Labor Relations Act, as amended, 29 U.S.C. §186 (c)(5) and (d), and Sections 3, 203(a), 205, 206(d)(1), 404(a)(1), 409(a), 514(a) and (c), and 1021 (c) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§1002, 1053(a), 1055, 1056 (d)(1), 1104(a)(1), 1109(a), 1144(a) and (c), and Pub. L. No. 93-406, §1021(c), 88 Stat. 134 (1974). The California statutes involved are California Civil Code Sections 5105 and 5125. The Constitutional and statutory provisions referred to above are set forth in Appendix A, *infra* pp. 1-10.

Questions Presented.

Whether the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 29 U.S.C. §1001 *et seq.*, preempts California's community property laws relating to the division of property in dissolution proceedings to the extent they authorize a state court to order a "qualified" pension trust fund to make a direct payment of benefits to someone other than an "employee", "participant", "beneficiary", or "relative"?

Whether this case should be governed by this Court's recent ruling in *Hisquierdo v. Hisquierdo,* 47 U.S.L.W. 4141 (U.S. Jan. 22, 1979)?

Whether Section 302(c)(5) of the National Labor Relations Act, as amended, 29 U.S.C. §186(c)(5), preempts California's community property laws relating to the division of property in dissolution proceedings

to the extent they authorize a state court to order a pension trust fund, which is jointly administered by management and union trustees, to make a direct payment of benefits to someone other than an employee, his family or dependents?

Whether the court below acted prematurely and improperly in ordering Appellant to make direct payments of benefits to Respondent when less burdensome remedies were potentially available?

Statement of the Case.

On June 15, 1945, Leroy A. Johns (hereinafter "Johns") and Respondent were married in Yuma, Arizona. Sometime thereafter, the couple moved to California where Johns became employed in the plumbing, heating and piping industry.

By virtue of his employment, Johns was covered by a collective bargaining agreement which required that his employer pay contributions into the Appellant trust fund,[1] based upon the number of hours worked.[2]

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[1]Appellant receives contributions from well over 1200 employers, covering in excess of 10,000 active employees. Appellant also processes approximately 25 applications per month for retirement benefits and more than 3700 checks per month for the purpose of paying pension benefits to current retirees.

[2]Section 302 of the National Labor Relations Act, as amended, provides that payments of money by an employer to his employees' representative shall be unlawful except in certain specific, limited situations. The payments by Johns' employer or employers to Appellant trust fund were made pursuant to the Section 302(c)(5) exception. That exception provides in pertinent part that payments by an employer to a trust fund shall be lawful if the contributions are

> "for the sole and exclusive benefit of the employees of such employer, and their families and dependents. Provided, that (a) such payments are held in trust for the purpose of paying either from principal or income

(This footnote is continued on next page)

The trust fund, which on January 1, 1975 became subject to the provisions of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"), Pub. L. No. 93-406, 29 U.S.C. §1001 *et seq.*, was established and has been administered according to the mandates of Section 302(c)(5) of the National Labor Relations Act (hereinafter "NLRA"), as amended, 29 U.S.C. §186(c)(5). The trust agreement creating Appellant provides for the payment of certain specified retirement benefits to the employee, his family or dependents once specified conditions are met, and contains a "spendthrift" provision which prohibits the "assignment" or "alienation" of benefits until such benefits are actually paid to the retiree.

On February 25, 1976, the Honorable Louis M. Welsh, Judge of the Superior Court of the State of California for the County of San Diego, ordered that Appellant be joined in that certain action entitled *In re the Marriage of Leroy A. Johns and Edith J. Johns*, Case No. DN 11522.

On that same date, Respondent filed with the Superior Court an Application for Order for Payment from the Community Retirement Fund. By said Application, Respondent sought an order instructing Appellant to withhold and to pay directly to Respondent one-half (½) of John's retirement benefits which were

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or both, for the benefit of employees, their families and dependents, . . . pensions on retirement or death of employees, . . . (b) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, . . . (c) such payments as are intended for the purpose of providing pensions or annuities for employees are made to a separate trust fund which provides that the funds therein cannot be used for any purpose other than paying such pensions or annuities; . . . ." 29 U.S.C. §186(c)(5).

at that time, and are today, 100% vested. Appellant opposed the Application asserting, *inter alia*, that the court was without jurisdiction to grant the requested order insofar as ERISA and the NLRA preempt state laws regarding the division of community property in dissolution proceedings.

Pursuant to a stipulation entered into by all the parties, the dissolution proceeding was bifurcated. In the main proceeding, the pension benefits in question were adjudicated community property. Thereafter, on August 9, 1976, the remaining issues were tried without a jury, the Honorable Charles W. Froelich, presiding. After a hearing upon a stipulated set of facts, the court rendered an oral intended decision in favor of Respondent and against Appellant. Thereafter, on September 2, 1976, the court approved Respondent's Proposed Findings of Fact and Conclusions of Law and Proposed Form of Judgment, and ordered that Appellant pay directly to Respondent her one-half (½) community property interest in Johns' periodic retirement benefits.

As previously noted, on November 3, 1976, Appellant filed a timely appeal from the aforementioned order in the Court of Appeal for the Fourth Appellate District of the State of California. Rejecting Appellant's contention that the community property laws which serve as the basis of the order are preempted by ERISA and the NLRA, the Court of Appeal affirmed the trial court's order. Appellant filed a timely Petition for Hearing before the California Supreme Court on November 21, 1978 to contest this decision. This petition was denied, however, on December 20, 1978.

Since Appellant first filed its appeal on November 3, 1976, a number of state and federal courts have

considered the issue of whether ERISA preempts California's community property laws. In *Stone v. Stone*, 450 F.Supp. 919 (N.D. Cal.), *appeal docketed*, No. 78-2313 (9th Cir. 1978); *Carpenters Pension Trust for Southern California v. Kronschnabel*, ... F.Supp. ..... (C.D. Cal. Oct. 31, 1978), *appeal docketed, 79-3031* (9th Cir. 1979); *Johnston v. Johnston*, 85 Cal. App. 3d 900, 149 Cal.Rptr. 798, *hearing denied* (Dec. 21, 1978), the courts agreed with the position taken by the Court of Appeal below. *Cf. Cody v. Riecker*, 454 F.Supp. 22 (E.D.N.Y. 1978). In *Francis v. United Technologies Corp.*, 458 F.Supp. 84 (N.D. Cal. 1978), however, the court rejected that view, holding that "ERISA has preempted the operation of so much of California's community property laws as purport to give a nonemployee spouse an interest in the plan benefits."

Additionally, in the recent case of *Hisquierdo v. Hisquierdo*, 47 U.S.L.W. 4141 (U.S. Jan. 22, 1979), this Court held California's community property laws to be preempted by the Railroad Retirement Act of 1974, 88 Stat. 1305, 45 U.S.C. §231 *et seq.*, to the extent they require the division of benefits under that Act between a railroad employee and his spouse upon divorce. In so ruling, this Court relied heavily upon Section 231m of that Act, 45 U.S.C. §231m, which contains language intended to prevent a railroad employee from being deprived of "a portion of the benefit Congress . . . indicated was designed for him alone." Very similar language can be found in Sections 203(a), 206(d)(1) and 1021(c) of ERISA. 29 U.S.C. §§1053(a), 1056(d)(1) and Pub. L. No. 93-406, §1021(c), 88 Stat. 134 (1974).

Because of the uncertainty these conflicting decisions have generated in regard to the preemptive effect of ERISA with respect to California's community property laws, numerous employee benefit trust funds have been obliged to incur high litigation costs in an attempt to protect the interests of their participants and to obtain some final resolution of the matter. Moreover, the trust funds will undoubtedly continue to face such high costs until a definitive ruling is rendered by this Court.

Appellant therefore files this timely appeal in order to obtain uniformity of decisions, and to settle important issues of law.

ARGUMENT.

I.

ERISA Preempts State Law to the Extent That It Relates to or Attempts to Regulate Appellant.

A. ERISA Has the Broadest Possible Preemptive Effect.

The question of whether a state may exercise jurisdiction over a pension plan is a question of law to be decided by reference to ERISA and to the legislative history behind that act. ERISA is the culmination of 11 years of legislative work to devise a comprehensive federal regulatory program to supervise, protect and guarantee retirement and other employment benefits promised millions of workers in private industry and to regulate and protect the employee benefit plans which are established and maintained to provide the promised benefits. To eliminate the threat of conflicting or inconsistent state regulation of employee benefit plans, Congress specifically preempted this field of regulation. Section 514(a) of the Act clearly provides that ERISA

> "shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan described in Section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975." 29 U.S.C. §1144 (a) (emphasis added).

Additionally, Section 514(c) provides:

> "(1) The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State . . . .
>
> "(2) The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate,

> directly or indirectly, the terms and conditions of employer benefit plans covered by this title." 29 U.S.C. §1144(c).

The legislative history of Section 514 leaves no doubt that Congress intended ERISA to absolutely preempt the field of employee benefit plans. In the initial report on the bill to revise the Welfare and Pension Plans Disclosure Act, 29 U.S.C. §§301-309, the House Committee on Education and Labor commented as follows:

> "Except where plans are not subject to this Act and in certain other enumerated circumstances, *state law is preempted*. Because of the interstate character of employee benefit plans, the Committee believes it essential to provide for a uniform source of law . . . ." House Report (Education and Labor Committee) No. 93-533 (October 2, 1973) (emphasis added).

Similarly, after consideration of the bill by both the House and the Senate, the Joint Explanatory Statement of the Committee of Conference stated:

> "[T]he provisions of Title I are to supersede all State laws that relate to any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by any employee organization that represents employees or affecting interstate commerce." House Conference Report No. 93-1280 (August 12, 1974).

Further, in introducing the Conference Report on ERISA, Senator Harrison A. Williams, Jr., Chairman of the Senate Committee on Labor and Public Welfare, stated:

> "It should be stressed that with the narrow exceptions specified in the bill *the substantive and*

enforcement provisions of the conference substitute are intended to preempt the field for federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force and effect of law." 120 Cong. Rec. S. 15, 737 (August 22, 1974) (emphasis added).

Case law also supports the position that ERISA preempts any and all state laws which may be inconsistent with the Act's intended effect upon employee benefit plans. In *Azzaro v. Harrett,* 414 F.Supp. 473 (S.D.N.Y. 1976), the court enjoined the State Superintendent of Insurance from inquiring into a participant's benefit status, stating:

"The legislative history of ERISA shows that Congress intended absolute preemption of employee benefit plans . . . .

"Preemption of the field was intended to provide uniform regulation of employee benefit plans . . . .

* * * *

"In order to prevent [the] contravention of the purpose of ERISA, the exception to federal regulation provided in Section 1144(b)(1)[3] must be narrowly construed to limit state regulation to what is essentially a cleanup role, that is, to the disposition of causes of action and disputes

[3]The exception contained in 29 U.S.C. §1144(b)(1) is not applicable to the instant suit. That section provides for a limited exception for a cause of action, act or omission which arose or occurred prior to the effective date of the act.

with respect to employee benefit plans existing before January 1, 1975." *Id.* at 474-75.

Hewlett-Packard Co. v. Barnes, 425 F.Supp. 1294 (N.D. Cal. 1977), contains perhaps the most exhaustive treatment of ERISA's preemptive provisions. After reviewing the terms of the statute and its legislative history, Judge Renfrew concluded:

"Overall, the legislative history reveals both that Congress carefully considered the question of preemption, including the feasibility of enacting a more limited preemption provision, and that Congress ultimately enacted Section 514(a) with the express purpose of summarily preempting state regulation of ERISA-covered employee benefit plans. That the statute, standing alone or buttressed by its legislative history, was intended to supersede state regulation of benefit plans such as plaintiff's is indisputable." *Id.* at 1300.

See also Wayne Chemical, Inc. v. Columbus Agency Service Corp., 426 F.Supp. 316 (N.D. Ind. 1977); *cf. Rehmar v. Smith,* 555 F.2d 1362 (9th Cir. 1976) (the application of state insurance law concepts to a collectively bargained-for pension plan was rejected on the ground that application of such law was contrary to federal policy).

The United States Department of Labor, Division of Pension and Welfare Programs, the federal agency responsible for the administration and enforcement of ERISA, has unequivocally determined that ERISA preempts all state law relating to employee benefit plans. In a letter to Willie D. Barnes, California Corporation Commissioner, dated July 14, 1976, James D. Hutchinson wrote:

> "The effect of this section [514] is to preempt all state laws which relate to employee benefit plans subject to the coverage of Title 1 of ERISA (Protection of Employee Benefit Rights), whether such state laws conflict with the terms of the federal legislation or would merely supplement the federal scheme."

Accordingly, it is quite clear that ERISA occupies the field to the exclusion of any state regulation of employee benefit plans or trust funds covered by ERISA. Thus, inasmuch as the order below directs Appellant as to both how much and to whom retirement benefits must be paid, the court's order constitutes a prohibited regulation by the state of an employee benefit trust fund subject to ERISA, in direct contravention to the requirements of ERISA.

B. An Analysis of Existing Case Law Substantiates That ERISA Preempts California's Community Property Laws in the Instant Case.

This Court has upheld the federal preemption of state community property laws where the Congressional intent to do so is express. In *Wissner v. Wissner,* 338 U.S. 665 (1949), an army officer designated his mother as the beneficiary to the proceeds of his national service life insurance policy. The officer's widow, claiming to be entitled under California community property laws to one-half of the proceeds, brought suit therefor. The California District Court of Appeal affirmed a judgment in the widow's favor, but this Court reversed it. Noting that Congress had expressly provided in the National Service Life Insurance Act that a chosen beneficiary is to be the sole owner of insurance proceeds, it held California's community property laws to be preempted to the extent they operate to designate a payee. *See also Hisquierdo v. Hisquierdo,* 47 U.S.L.W. 4141 (U.S. Jan. 22, 1979) (discussed *infra* at pp. 20-22, 27-28).

In the more recent case of *Teamsters v. Daniel,* 47 U.S.L.W. 4135 (U.S. Jan. 16, 1979), this Court rejected the contention that an employee's interest in a non-contributory, compulsory pension plan is a "security" within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934 largely because of the comprehensiveness of ERISA's regulatory scheme.

> "If any further evidence were needed to demonstrate that pension plans of the type involved here are not subject to the Securities Acts, the enactment of ERISA in 1974 would put the matter to rest. Unlike the Securities Acts, ERISA deals expressly and in detail with pension plans. . . .
>
> The existence of this comprehensive legislation governing the use and terms of employee pension plans severely undercuts all arguments for extending the Securities Acts to non-contributory, compulsory pension plans. Congress believed it was filling a regulatory void when it enacted ERISA. . . ." *Id.* at 4139.

This analysis must be said to apply with equal force to the issue of whether ERISA "occupies the field" to the exclusion of California's community property laws.

The United States District Court for the Northern District of California had occasion to interpret Section 514 and the legislative history relating to its enactment in *Francis v. United Technologies Corp.,* 458 F.Supp.

84 (N.D. Cal. 1978), a case factually identical to the one at hand. In a carefully reasoned opinion, Judge Poole concluded that the specific intent of Congress was to preempt *all* inconsistent state laws. Specifically rejecting the view of a fellow District Court Judge within his district, Judge Poole concluded that

> "[the language of ERISA] was intended to effect the broadest possible preemption of State law. The inclusion of all State laws which 'relate to' any ERISA plan was an attempt to make this preemption cover laws which were not specifically directed at this subject area, but which still affected it." *Id.* at 86.

It is certainly true that not all courts which have considered the issue have agreed with Judge Poole's conclusion that ERISA precludes a court from ordering a trust fund, such as Appellant, to make payments directly to a non-participant former spouse pursuant to California community property laws. *See Stone v. Stone,* 450 F.Supp. 919 (N.D. Cal.), *appeal docketed,* No. 78-2313 (9th Cir. 1978); *Carpenters Pension Trust for Southern California v. Kronschnabel,* ..... F.Supp. ..... (C.D. Cal. Oct. 31, 1978), *appeal docketed,* 79-3032 (9th Cir. 1979); *Johnston v. Johnston,* 85 Cal.App.3d 900, 149 Cal.Rptr. 798, *hearing denied* (Dec. 21, 1978); *cf. Cody v. Riecker,* 454 F.Supp. 22 (E.D.N.Y. 1978). A careful review, however, of one of the cases cited above, *Stone v. Stone,* clearly demonstrates that ERISA should, and does in fact, preempt such application. This is especially true where, as here, application of the community property rules would result in the payment of pension benefits to a non-employee *former* spouse who is neither a participant nor a beneficiary under the pension plan.

The *Stone* decision recognizes that "Section 514(a) certainly was intended to have broad preemptive effect, and State laws which *relate to* employee benefit plans differently than ERISA *relates to* them are generally preempted." *Stone v. Stone, supra* at 932 (emphasis added). Nonetheless, the Court argued that because the Act does not explicitly prohibit the transfer of benefits under California's community property laws, courts are not precluded from ordering the same. Appellant respectfully submits, however, that the inherent protective nature of the Act requires that such transfers be prohibited.

C. This Court's Hisquierdo Ruling Requires That California's Community Property Laws Be Held Preempted in the Instant Case.

Appellant recognizes that, as a matter of general policy, the " 'whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of the state and not to the laws of the United States.' *Buechold v. Ortiz,* 401 F.2d 371 (9th Cir. 1968), *quoting Ohio ex rel. Popovici v. Agler,* 280 U.S. 379, 383 (1930)." *Stone v. Stone, supra* at 924. This general policy of federal non-interference, however, should not be applied in the specific instance where Congress, as here, has acted expressly to protect a pensioner from involuntary forfeiture, alienation, or assignment of his pension benefits.

ERISA contains three separate sections designed to prevent the "forfeiture", "assignment", or "alienation" of an "employee's" benefits under a pension plan. Section 203(a) provides that a pension plan *must* make "an employee's right to his normal retirement benefit . . . *nonforfeitable*" in accordance with three optional

vesting schedules. 29 U.S.C. §1053(a) (emphasis added). Similarly, Section 206(d)(1) of the Act states:

> "Each pension plan *shall provide* that benefits provided under the plan *may not be assigned or alienated.*" 29 U.S.C. §1056(d)(1) (emphasis added).

Finally, Section 1021(c) states in pertinent part:

> "Section 401(a) [of the Internal Revenue Code of 1954, 26 U.S.C. §401(a)] is amended by inserting after paragraph (12) the following new paragraph:
>
> "'(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan *may not be assigned or alienated* . . . .'" Pub. L. No. 93-406, §1021(c), 88 Stat. 134 (1974) (emphasis added).

It should be noted that ERISA speaks in terms of employees only, making no reference to former spouses of employees. *See Kerbow v. Kerbow,* 421 F.Supp. 1253 (N.D. Tex. 1976). Obviously this fact is not the result of oversight, for Congress defined the Act's material terms with care so that they could be applied with precision. Section 3 of the Act provides in pertinent part:

> "For purposes of this title:
>
> * * * *
>
> "(6) The term 'employee' means any individual employed by any employer.
>
> "(7) The term 'participant' means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive

> a benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.
>
> "(8) The term 'beneficiary' means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.
>
> * * * *
>
> "(15) The term 'relative' means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant." 29 U.S.C. §1002.

Additionally, the fiduciary responsibilities recognized or created by the Act are clearly intended to protect the employee-participants and their dependents or beneficiaries, and no one else. Section 404(a)(1) of ERISA provides, in pertinent part:

> "[A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> (a) for the exclusive purpose of:
>
> "(i) providing benefits to participants and their beneficiaries; and
>
> "(ii) defraying reasonable expenses of administering the plan; . . ." 29 U.S.C. §1104(a)(1).

Finally, Section 205 of ERISA (29 U.S.C. §1055), which specifies that a pension plan must provide that benefits shall be paid in the form of a "qualified joint survivor annuity" unless the employee elects otherwise, makes no provision for the former spouse of either an employee or a participant. Rather, it provides for the income protection of an employee and his spouse for the lifetime of both. In this connection,

the observation of a commentator in a recent law review article is instructive.

> "It appears to be the express intent of Congress that no other beneficiary but the employee's *spouse* should benefit from the retirement plan upon the death of the employee." Thiede, "The Community Property Interest of the Non-Employee Spouse on Private Retirement Benefits", 9 U.S.F.L. Rev. 635, 646 (1975) (emphasis added).

This Court recently considered the preemptive effect of a similar statutory scheme in *Hisquierdo v. Hisquierdo*, 47 U.S.L.W. 4141 (U.S. Jan. 22, 1979). In that case, the California Supreme Court had held that such portion of a railroad employee's retirement benefits as had accrued during his marriage under the federal Railroad Retirement Act of 1974, 88 Stat. 1305, 45 U.S.C. §231 *et seq.*, were divisible as community property between he and his wife upon their divorce. The petitioner-employee had contended that his wife's claim was barred by Section 231m of that act which provides:

> "Notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be *assignable* or be subject to any tax or garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated. . . ." 45 U.S.C. §231m (emphasis added).

The California Supreme Court rejected this contention, however, reasoning that Section 231m was only intended to prevent creditors from reaching a railroad employee's benefits under the Act.

This Court "granted *certiorari* to consider whether, under the standard of [its] decided Supremacy Clause cases, the award to respondent impermissibly conflicts with the Railroad Retirement Act." *Hisquierdo, supra,* 47 U.S.L.W. at 4143. After noting the similarities between that Act and a private pension program, this Court reversed the judgment of the California Supreme Court, stating:

> "Section 231m plays a most important role in the statutory scheme. Like anti-attachment provisions generally, it ensures that the benefits actually reach the beneficiary. It pre-empts all state law that stands in its way. It protects the benefits from legal process '[n]otwithstanding any other law . . . of any State.' . . . . It prevents the vagaries of state law from disrupting the national scheme and guarantees a national uniformity that enhances the effectiveness of congressional policy."
>
> * * * *
>
> "We . . . cannot so lightly discard the settled view that anti-assignment statutes have substantive meaning. Section 231m goes far beyond garnishment. It states that the annuity shall not be subject to any 'legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.' Its terms make no exception for a spouse. The judicial construction on which respondent relies is a child of equity, not law." *Hisquierdo, supra,* 47 U.S.L.W. at 4144-45 (citations omitted).

As noted above, Petitioner's pension plan contains a spendthrift provision which prohibits the assignment or alienation of benefits provided under the plan. Article VI, Section 6 of this plan, which was included to comply with the mandates of Sections 206(d)(1) and

1021(c) of ERISA (29 U.S.C. §1056(d)(1) and Pub. L. No. 93-406, §1021(c), 88 Stat. 134 (1974)), states:

> "Any . . . prospective pension, right or interest shall not be subject in any manner to . . . interference by operation of law or otherwise, and shall be exempt from . . . legal or equitable process or proceeding."

This provision, and the pertinent ERISA sections it effectuates, should be given the same interpretation that this Court gave to Railroad Retirement Act Section 231m, 45 U.S.C. §231m, in *Hisquierdo*. That is, ERISA should be held to prohibit the involuntary division of benefits under the plan between a participant and his former spouse, notwithstanding the contrary requirements of California's community property laws. In the same vein, the order of the court below instructing Appellant to make direct payments to Respondent should be held illegal and unenforceable as in contravention of the express provisions of both ERISA and the pension plan.

D. Other Considerations Dictate Against Affirming the Order of the Superior Court.

Several considerations make inadvisable an affirmation of the order of the Superior Court below. First, if Appellant accedes to that order, its trustees may be exposed to personal liability for breaching their fiduciary responsibilities pursuant to Section 409 of ERISA.[4]

---

[4]Section 409(a) provides:

> "any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act." 29 U.S.C. §1109.

Second, employee benefit plans subject to ERISA must send information about benefits and other concerns to each participant and beneficiary. If Respondent were permitted to obtain an assignment, as the court's order below necessarily confers, she would be entitled to receive such information, thereby doubling the administrative work involved. The Court of Appeal below simply shrugged off this factor by concluding, apparently via judicial notice, that: "In this day of computer technology, the burden on the Fund to make out two checks and envelopes, rather than one, is insignificant." Appendix B, *infra* pp. 11-12. The court's analysis, however, misses the point. ERISA specifically provides that the state courts may not increase the administrative burden *at all*. Moreover, the court viewed this matter in a total vacuum. It did not consider the fact that many participants marry and divorce several times during their pension-accruing years. Nor did the court consider the fact that the fund receives contributions for well over 10,000 active workers and pays retirement benefits to more than 3,700 current retirees. Thus, the administrative burden created by the trial court and approved by the Court of Appeal in its decision below clearly is *not* "insignificant." Indeed, if this decision is allowed to stand, the administrative burden may well affect the level of benefits which the Fund is able to provide.

Moreover, the Pension Benefit Guarantee Corporation, created by Congress, insures pension benefits.

It is self-evident, therefore, that the granting of an assignment to any other person would increase Appellant's per capita insurance premiums, in addition to the increased liabilities and administrative costs. Thus, the court's order below clearly directs Appellant to incur additional administrative costs and liabilities, and thereby effectively regulates Appellant in violation of the comprehensive federal scheme embodied in ERISA.

The unmistakable intent of Congress is to deprive all state courts of jurisdiction to grant or enforce against Appellant the injunctive order sought and obtained by Respondent in the court below. Congress clearly feared that the application of state law would disrupt the regulatory program that it had so carefully constructed. Accordingly, it is respectfully submitted that the decision below must be reversed.

II.

The National Labor Relations Act, as Amended, Further Preempts the Application of State Law to the Instant Controversy.

The National Labor Relations Act, 29 U.S.C. §151 *et seq.*, further supports the position that the state courts are without jurisdiction to regulate or affect Appellant. As noted earlier, Appellant exists by virtue of and operates pursuant to the provisions of Section 302(c)(5) of the NLRA. ERISA does not purport to preempt, alter, modify or supersede this section or any other federal law governing pension plans.[5] Section 514(d). As was ERISA, the NLRA and its amendments were enacted primarily for the benefit

[5]Except as provided in sections 111 and 507(b), 29 U.S.C. §§1031 and 1137(b). The exceptions, however, are not relevant to the instant controversy.

and protection of employees. More importantly, the Section 302(c)(5) exception to the general prohibitions contained in Section 302(a) provides that employers may contribute to jointly administered trust funds which are established and maintained "*for the sole and exclusive benefit of the employees of such employer, and their families and dependents. . . .*" 29 U.S.C. §186(c)(5) (emphasis added).

By directing Appellant to pay retirement benefits directly to Respondent, the court below is ordering the payment of money to someone other than an employee, his family or dependents. Once the familial connection of marriage is severed, federal law *absolutely prohibits* payments to an ex-spouse. Thus, if Appellant complied with the order below, the trust fund would no longer be maintained for the sole and exclusive benefit of employees and their families. As such, all contributions by all employers to Appellant would violate the precise mandates of Section 302, and would, in turn, give rise to potential criminal liability pursuant to section 302(d).[6]

In line with the obvious congressional intent, the courts have broadly construed the prohibitions and have narrowly construed the exceptions contained in Section 302. To date, the most definitive construction of Section 302(c)(5) is found in *In re Typo-Publishers Outside Tape Fund*, 478 F.2d 374 (2nd Cir.), *cert. denied*, 414 U.S. 1002 (1973). In that case, the court noted

[6]Section 302(d) provides:

"Any person who wilfully violates any of the provisions of this Section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both." 29 U.S.C. §186(d).

that Section 302 was primarily intended to prevent employers from tampering with the loyalty of union officials and to prevent union officials from exacting improper payments from employers. It noted further, that the prohibitions and exceptions thereto are clear and unambiguous. The trust fund exception, the court continued, was intended to assure that monies deducted from an employee's wages would be used to benefit those employees for whom the contributions were made. In holding that Section 302(c)(5) prohibits the payment of benefits to employees of non-contributing employers, the court stated:

> "While it may be that Congress in enacting section 302 did not intend to prohibit the type of trust fund at issue here, this court is bound, nonetheless, by the express statutory language that only payments by an employer to the 'trust fund . . . for the sole and exclusive benefit of the employees of such employer . . .' are exempt from the general prohibitions of section 302. Where several employers have agreed in negotiations with a union to set up a section 302 trust for the benefit of union members, it is clear beyond cavil that '[o]nly employees and former employees of employers who are lawfully contributing to [the] union . . . trust fund may qualify as beneficiaries.'" *Id.* at 375 (citations omitted).

For the foregoing reasons, Appellant cannot, consistent with federal law, provide direct retirement benefit payments to former spouses of employees, such as Respondent. Since ERISA and the NLRA absolutely preempt the field, and since the court below misguidedly attempted to direct Petitioner to commit an illegal and improper act, based upon its application of California community property law, the decision below is void and unenforceable as a matter of law. Accordingly, it is respectfully submitted that the decision below must be reversed.

III.

Alternative Remedies for Securing Respondent's Community Property Claim.

Appellant does not take the position herein that Johns' retirement benefits may not be characterized as community property. It merely contends that a state court may not direct it to make a distribution directly to a non-participant, and thereby impose state regulation on a federally regulated pension plan.

In *Hisquierdo v. Hisquierdo, supra,* this Court considered the permissibility under the Railroad Retirement Act of two alternative approaches to securing a non-participant/spouse's claim to her community property share of retirement benefits which accrued during marriage. The first was for the trial court to retain jurisdiction and order the participant/spouse to pay the non-participant/spouse an appropriate portion of his benefits as he receives them. The Court rejected this approach, however, stating that it "runs contrary to the language and purpose of §231m" because it "would mechanically deprive petitioner of a portion of a benefit Congress . . . indicated was designed for him alone." *Hisquierdo, supra,* 47 U.S.L.W. at 4144.

The second approach was for the trial court to make an award to the non-participant spouse, out of presently available community property, of an amount sufficient to compensate her for her interest in the participant/spouse's anticipated benefits. The

Court rejected this alternative as well on the ground that it "would upset the statutory balance and impair petitioner's economic security just as surely as would a regular deduction from his benefit check." *Hisquierdo, supra,* 47 U.S.L.W. at 4145. More specifically, however, it found this proposed remedy unattractive because it conflicted with the prohibition against the "anticipation" of benefits found in Section 231m of the Act. 45 U.S.C. §231m.

Both of these approaches would appear to be potentially present in the instant case. If for any reason one or both are found to be permissible under ERISA, in contrast to the Railroad Retirement Act, the court below can be said to have acted prematurely and improperly by attempting to impose upon Appellant the duty to divide and distribute the community assets. For there is no suggestion in the record on appeal that Johns was in any way reluctant to obey the trial court's lawful orders or that Respondent had any difficulty whatsoever in receiving her share of the community property. Moreover, even if all community assets, exclusive of the retirement benefits in question, were divided equally between the parties, there are no facts to suggest that Johns would refuse to pay Respondent her one-half (½) community property interest as the periodic benefits are received.

If, on the other hand, both remedies are found to be prohibited under ERISA for analogous reasons, logic compels this Court to hold an order instructing Appellant to make a direct distribution to Respondent to be barred as well.

Conclusion.

Upon the strength of the foregoing, it is clear that ERISA and the NLRA preempt the application of state law where such application would regulate, affect or relate to an employee benefit plan. Since the court below applied state community property law to direct Appellant to pay retirement benefits directly to Respondent, the judgment is clearly state action which improperly attempts to regulate a federally regulated trust fund. Moreover, to the extent that the court below could have legitimately ordered Johns to either pay Respondent a proportionate amount of his benefits as received or an amount out of existing community assets sufficient to compensate her for her entire community share of those benefits, it acted prematurely and improperly in ordering Appellant to make direct payments to her. In any case, Appellant respectfully submits that the decision of the Court of Appeal below must be reversed.

Dated: March 14, 1979.

Respectfully submitted,

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APPENDIX A.

Constitutional and Statutory Provisions Involved.

1. Article VI, Clause 2 of the United States Constitution (U.S. Const. art. VI, cl. 2) provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. Section 302(c)(5) of the National Labor Relations Act, as amended, 29 U.S.C. §186(c)(5), provides in pertinent part:

> "(c) The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or

unemployment benefits or life insurance, disability and sickness insurance, or accident insurance. . . ."

3. Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1002, provides in pertinent part:

"(6) The term 'employee' means any individual employed by an employer.

"(7) The term 'participant' means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

"(8) The term 'beneficiary' means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

* * *

"(15) The term 'relative' means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant."

4. Section 203(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1053(a), provides in pertinent part:

"(a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age. . . ."

5. Section 205 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1055, provides:

"(a) If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

"(b) In the case of a plan which provides for the payment of benefits before the normal retirement age as defined in section 3(24), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(1) the date the employee reaches the earliest retirement age, or

(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

"(c)(1) A plan described in subsection (b) does not meet the requirements of subsection (a) unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period.

(2) A plan does not meet the requirements of this subsection unless, in the case of such election, the payments under the survivor annuity are not less than the payments which would

have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

"(d) A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

"(e) A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity.

"(f) A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation,

as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(1) the participant dies from accidental causes,

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) such election or revocation is made before such accident occurred.

"(g) For purposes of this section:

(1) The terms 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability).

(2) The term 'earliest retirement age' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) The term 'qualified joint and survivor annuity' means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

"(h) For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury)

any increased costs resulting from providing joint and survivor annuity benefits under an election made under subsection (c).

"(i) This section shall apply only if—

(1) the annuity starting date did not occur before the effective date of this section, and

(2) the participant was an active participant in the plan on or after such effective date."

6. Section 206(d)(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1056(d)(1) provides:

"(d)(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated."

7. Section 404(a)(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1104(a)(1), provides:

"(a)(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title."

8. Section 409(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1109(a), provides:

"(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduicary may also be removed for a violation of section 411 of this Act."

9. Section 514(a) and (c) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1144 (a) and (c), provides:

"(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

"(c) For purposes of this section:

(1) The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term 'State' includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title."

10. Section 1021(c) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, §1021(c), 88 Stat. 134 (1974) provides:

"(c) RETIREMENT BENEFITS MAY NOT BE ASSIGNED OR ALIENATED.— Section 401 (a) is amended by inserting after paragraph (12) the following new paragraph:

'(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or

beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on the date of the enactment of the Employee Retirement Income Security Act of 1974.' "

11. Cal. Civ. Code §5105 provides:

"The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests. This section shall be construed as defining the respective interests and rights of husband and wife in community property."

12. Cal. Civ. Code §5125 provides:

"(a) Except as provided in subdivisions (b), (c), and (d) and Sections 5113.5 and 5128, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

"(b) A spouse may not make a gift of community personal property, or dispose of community personal property without a valuable consideration, *without the written consent of the other spouse.*

"(c) A spouse may not sell, convey, or encumber the furniture, furnishings, or fittings of the

home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

"(d) A spouse who is operating or managing a business or an interest in a business which is community personal property has the sole management and control of the business or interest."

APPENDIX B.

Copy of the Decision of the Court of Appeal, Fourth Appellate District, Division One, of the State of California, 85 Cal. App. 3d 511, 149 Cal. Rptr. 551 (1978).

"OPINION

BROWN (Gerald), P.J.—(1) The respondent Edith J. Johns owned one-half of the retirement benefits listed under her husband's name (Civ. Code, §5105). The retirement benefits were 100 percent community property and were entirely vested. Upon divorce the superior court ordered appellant Retirement Fund Trust to pay one-half the retirement directly to Edith. The former husband does not complain in the appeal but the fund does, saying, under federal preemption, it should pay the benefits solely to the husband, and Edith can take her chances collecting from him.

We find no impediment to the fund sending a monthly check to the half-owner Edith. In this day of computer technology, the burden on the fund to make out two checks and envelopes, rather than one, is insignificant.

Edith has as much right to manage and control the community property as her former husband (Civ. Code, §5125).

We hold the Employee Retirement Income Security Act of Congress (ERISA) does not preempt California law as applied here in matrimonial matters (*In re Marriage of Fithian*, 10 Cal. 3d 592, 597 [111 Cal. Rptr. 369, 517 P. 2d 449]; *In re Marriage of Sommers*, 53 Cal. App. 3d 509, 515 [126 Cal. Rptr. 220]; see *Cody v. Riecker*

(E.D.N.Y. 1978) 454 F. Supp. 22; *Stone v. Stone* (N.D. Cal. 1978) 450 F.Supp. 919; cf. *Francis v. United Technologies Corp.* (N.D. Cal. 1978) —F.Supp.—). The spendthrift features of ERISA are not applicable because Edith is an owner, not a creditor. See Thiede, *The Community Property interest of the Non-Employee Spouse in Private Retirement Benefits* (1975) 9 U.S.F. L.Rev. pages 635, 650.

Judgment affirmed.

Cologne, J., and Wiener, J., concurred."

APPENDIX C.

Copy of the Minute Order of the California Supreme Court Denying Appellant's Petition for Hearing.

"SUPREME COURT MINUTES
WEDNESDAY, DECEMBER 20, 1978
SAN FRANCISCO, CALIFORNIA

* * *

4 Civ.

16316

Div. 1

Johns v. Retirement Fund Trust of the Plumbing, Heating and Piping Industry of Southern California
Appellant's petition for hearing DENIED."

APPENDIX D.

Notice of Appeal to the Supreme Court of the United States.

Filed March 2, 1979 in the Court of Appeal, Fourth Appellate District, State of California.

Retirement Fund Trust of the Plumbing, Heating and Piping Industry of Southern California, Appellant, vs. Edith J. Johns, Respondent. 4th Civil No. 16316.

NOTICE IS HEREBY GIVEN that the RETIREMENT FUND TRUST OF THE PLUMBING, HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA, the above named Appellant, hereby appeals to the Supreme Court of the United States from the judgment of the Court of Appeal, Fourth Appellate District, of the State of California entered in this action on October 13, 1978. Said judgment, which affirmed the order of the Honorable Charles W. Froelich, Judge of the Superior Court of the State of California for the County of San Diego, requiring Appellant to make direct payments to Respondent, became final on December 20, 1978, when the California Supreme Court denied Appellant's Petition for Hearing.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

DATED: February 26, 1979.

HILL, FARRER & BURRILL
STUART H. YOUNG, JR.
JAMES G. JOHNSON
FRED T. ASHLEY
/s/ By James G. Johnson
JAMES G. JOHNSON
Attorneys for Appellant